certain as any human being can be in this world that the accused is guilty of the offence before you can convict him." Towards the end they were told :

"If you accept his denial, or if you think that it raises a doubt in your minds on consideration of all the evidence, then you must give him the benefit of that doubt."

In the course of the summing-up they were told again and again that they must be sure and that they must be certain. In the event we are satisfied that when they retired they could have been under no misapprehension; they must have been well aware that if they were in any way less than sure as to the guilt of the appellant it was not open to them to find him guilty of murder.

*Appeal dismissed.*

Solicitors: *Marshall & Chung.*

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## YEW SENG TRADING CO. v. HARDIAL SINGH

**[C.A. (Tan Ah Tah, Chua and Wee Chong Jin JJ.) March 15, 1961]**

**[Singapore — Civil Appeal No. 18 of 1960]**

*Landlord and Tenant — "Rent" — "Municipal services paid by tenant" — Control of Rent Ordinance, (Cap. 242), s.15(1)(g) — Construction of.*

The main point to be decided in this appeal was whether upon a true construction of section 15(1)(g) in a case in which only the second limb is applicable municipal services paid by the tenant who had sub-let part of the premises should be taken into account in determining whether or not he receives in respect of such sub-letting rents which exceed in the aggregate 110% of the recoverable rent paid by him including the apportioned rental or value of any part of the premises retained by or not sublet by him.

**Held:** the word "rent" with the words "excluding any municipal services paid by the tenant" appearing in brackets in the first limb cannot properly or reasonably be supposed to have assigned to it by the legislature any different meaning from the same word in the second limb of the same paragraph.

COURT OF APPEAL.

*A. P. Rajah* for the appellants.

*J. E. Lloyd* for the respondent.

**Wee Chong Jin J.** (with whom **Tan Ah Tah** and **Chua JJ.** agreed): This appeal raises an interesting point on the construction of section 15(1)(g) of the Control of Rent Ordinance (Cap. 242) which provides as follows :—

15.—(1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

(g) where the tenant having sublet the premises or part thereof receives in respect of such subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him.

It will be seen that this paragraph contains two limbs and that the expression "excluding any municipal services paid by the tenant" appears in brackets in the first limb but not in the second limb. The point to be decided is whether upon the true construction of this paragraph in a case to which only the second limb is applicable municipal services paid by the tenant who has sublet part of the premises should be taken into account in determining whether or not he receives in respect of such subletting rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by him including the apportioned rental or value of any part of the premises retained by or not sublet by him. This point though raised at the trial was not dealt with by the learned trial Judge who found that the appellants had exceeded the limit imposed even assuming that the municipal services in fact paid by them should be taken into account.

During the hearing of the appeal it was conceded that if all the payments made by the appellants fall within the meaning of the word "rents" and should be taken into account they had not exceeded the limit imposed by this paragraph.

In my opinion, on normal canons of construction, it would appear to be unarguable that the words "excluding any municipal services paid by the tenant" which appear in the first limb but not in the second limb can be read into the second climb. Again, it seems on normal canons of construction that the word "rents" which appears in both limbs must have the same meaning and that the legislature in excluding from "rents" in the first limb any municipal services paid by the tenant and in not excluding from "rents" municipal services paid by the tenant in the second limb must by necessary implication be taken to have used the word "rents" wherever it appears in this paragraph as including municipal services paid by the tenant unless expressly excepted.

Mr. Rajah however contends that the word "rents," unless specifically defined in the Ordinance to include municipal services, must be given its common law meaning, and that whatever the common law meaning of rent may be, it does not include municipal services. He is however driven to admit that on this argument the words "excluding any municipal services paid by the tenant" which appear in the first limb have been included *ex abundanti cautela.*

I am unable to agree with Mr. Rajah's contention and am of the opinion that this paragraph must be construed in accordance with

the normal canons of construction. I cannot think that the word "rents" in the first limb with the words "excluding any municipal services paid by the tenant" appearing in brackets immediately after it can properly or reasonably be supposed to have assigned to it by the legislature any different meaning from the same word in the second limb of the same paragraph.

The only other matter that needs consideration is Mr. Rajah's submission that the respondent is now precluded from contending that upon the true construction of this paragraph municipal services must be excluded because his case on his pleadings is that the appellants have, excluding any municipal services paid, exceeded the limit imposed. It is clear from the record of appeal and indeed from the judgment of the learned trial Judge that the respondent relied *inter alia* on the point of law as to the true construction of this paragraph. In any event the pleadings plainly disclose that the respondent is seeking to recover possession of premises subject to the Ordinance and it cannot be doubted that where the facts show that the case falls within section 15(1)(g) of the Ordinance, which has been pleaded by the respondent, the Court has power to make an order or judgment for the recovery of possession of such premises. This contention of Mr. Rajah's also fails. I would accordingly dismiss the appeal with costs.

*Appeal dismissed.*

Solicitors: *Tan, Rajah & Cheah*; *Drew & Napier.*

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## *Re* CHAN EOW BENG

**[R. Cr. J. (Rigby J.) March 21, 1961]**

**[Penang — Criminal Revision No. 1 of 1961]**

*Road Traffic — Endorsement on licence — Limited disqualification — Unintended effect on defendant's livelihood — 'Private car' not within classification — Road Traffic Ordinance, 1958, ss.4, 30(1) and (2) — Motor Vehicles (Driving Licence) Rules, 1959.*

The defendant was charged with using a motor-car as a public service vehicle when the vehicle was not licensed for such a purpose. The learned Magistrate made an order under section 30(1) of the Road Traffic Ordinance, disqualifying the defendant from holding or obtaining a licence to drive a private motor-car for a period of 12 months.

**Held:** (1) effect of such order, though unintended, must necessarily and consequently deprive the defendant of his licence to drive a car of that class or description as the holder of a vocational licence, under section 133(1) and (2) of the Road Traffic Ordinance;

(2) the Order of the Magistrate is bad for uncertainty, since the term 'private car' is not to be found in the classification of motor vehicles under section 4 of the Road Traffic Ordinance or in the classification and description of such vehicles under the Motor Vehicles (Driving Licence) Rules.

**Obiter:** ".....Limited disqualifications should refer to 'vehicles which can be found under a particular class in the Act or under a particular description'."

*Cases referred to:*—

(1) *Re Kanapathipillai & Ors.* [1960] M.L.J. 243.
(2) *Burrows* v. *Hall* [1950] 2 All E.R. 156.
(3) *Petherick* v. *Buckland* [1955] 1 All E.R. 151.

CRIMINAL REVISION.

*L. A. Massie* (Deputy Public Prosecutor) for the Public Prosecutor.

*Tan Lye Huat* for accused as *amicus curiae.*

**Rigby J.:** This case was referred to me by the learned Magistrate with a view to a revision of the order made by him. Since the case is by no means free from difficulty I think it would be convenient if, before dealing with the nature of his application or request for revision, I set out the facts of the matter.

The defendant was charged with using a motor-car as a public service vehicle, when the vehicle was not licensed for such a purpose. As a necessary consequence of that charge he was also confronted with the more serious charge of using the car when there was not in force, in relation to its user, a policy of insurance in respect of third party risks.

The facts themselves were perfectly simple and straightforward. A lady in Prangin Road required a taxi to take her to Minden Barracks. She saw a row of motor-cars, parked unattended, which she assumed to be taxis. There was a group of men standing on the opposite side of the road. One of the men — who was, in fact, the defendant — approached her and inquired if she wanted a taxi. She replied in the affirmative. He moved up his vehicle and drove her to Minden Barracks. On arrival there, the car was stopped for checking by the Military guard at the gate. Apparently an Army Sergeant asked the defendant where his taxi plate was, to which he replied that he had not got one. The defendant was permitted to enter the gates and drive the lady to her destination. She was then charged the extremely reasonable and, I should have thought, wholly uneconomic fare of $2. That occurred on the 28th September, 1960. On the 16th December, 1960, the defendant appeared in Court to answer to these two charges. The defendant is, in fact, the holder of a vocational licence, issued under section 133(1) of the Road Traffic Ordinance, authorising him to drive a public service vehicle, a taxi cab. His defence was that on this particular day his own taxi was being repaired. The lady stopped him and asked him to drive her to Minden Barracks and he agreed to do so. Evidence was given that, in fact, his taxi was being repaired that day. I am informed that although the defendant was at the material time the registered owner of the private car he was not, in fact, the owner of the taxi and was simply a hired driver. On the facts, the learned Magistrate very properly convicted him of both offences as charged and fined him $70 on the 1st Charge and $50 on the 2nd Charge. Again, in respect of the 2nd Charge the Magistrate very properly gave him an opportunity, through his Counsel, to put forward